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12  
13 **UNITED STATES DISTRICT COURT FOR THE**  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 Danielle A. Singer, Project Therapy, LLC  
16 (d/b/a Therapy Threads), Holly Dean, DZ  
17 Reserve, and Cain Maxwell (d/b/a Max  
18 Martialis) individually and on behalf of others  
similarly situated,

19 Plaintiffs,

20 v.

21 FACEBOOK, INC.,

22 Defendant.

Case No.: 3:18-cv-04978

**SECOND AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

CLASS ACTION

1 Plaintiffs Danielle A. Singer, Project Therapy, LLC (d/b/a Therapy Threads), Holly Dean, DZ  
 2 Reserve, and Cain Maxwell (d/b/a Max Martialis), individually and on behalf all others similarly  
 3 situated, hereby file suit against Facebook, Inc., and allege the following:

#### 4 **INTRODUCTION**

5 1. Facebook, Inc. (“Facebook”) is a social media company that “generate[s] substantially  
 6 all of [its] revenue from advertising.”<sup>1</sup> In 2017, Facebook earned approximately \$40 billion from  
 7 advertising revenue.<sup>2</sup>

8 2. The core of Facebook’s business is its large purported user base, which ostensibly  
 9 enables advertisements placed on Facebook.com to reach a large number of people. Facebook claims  
 10 to have 2.13 billion monthly active users globally, with over 240 million monthly active users in the  
 11 U.S. alone.<sup>3</sup>

12 3. Before advertisers make a purchase, Facebook represents that their advertisements can  
 13 potentially reach a specified number of people (“Potential Reach”). Facebook defines “potential reach”  
 14 as “an estimation of how many people are in an ad set’s target audience.”<sup>4</sup> Depending on the  
 15 demographic targeting selected by the advertiser, the Potential Reach is often millions of people.  
 16 Facebook also represents that the advertisement will reach an estimated number of people per day  
 17 (“Estimated Daily Reach”). The Estimated Daily Reach is based, in part, on the audience size or  
 18 Potential Reach. According to Facebook, Estimated Daily Reach “gives you an idea of how many of  
 19 the people in your target audience [or Potential Reach] you may be able to reach on a given day.”<sup>5</sup>

20 4. These foundational representations are false. Based on publicly available research and  
 21 Plaintiffs’ own analysis, Facebook overstates the Potential Reach of its advertisements. For example,  
 22 based on publicly available data, Facebook’s purported Potential Reach among the key 18-34 year-old  
 23

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24 <sup>1</sup> Facebook, Inc., Annual Report (Form 10-K) for 2017 Fiscal Year, at 41 (Feb. 1, 2018).

25 <sup>2</sup> *Id.*, at 43 (Feb. 1, 2018).

26 <sup>3</sup> See *Facebook’s Ads Manager*, available at <https://www.facebook.com/adsmanager/creation>  
 (last accessed August 1, 2018)

27 <sup>4</sup> See “*About potential Reach*”, available at <https://www.facebook.com/adsmanager/creation>

28 <sup>5</sup> See *What are “Potential Reach” and “Estimated Daily Reach?”*, available at  
<https://www.facebook.com/business/help/717368264947302/?ref=u2u> (last accessed August 1, 2018)

1 demographic in every state exceeds the actual population of 18-34 year-olds. Based on a combination  
2 of publicly available research and Plaintiffs' own analysis, among 18-34-year-olds in Chicago, for  
3 example, Facebook asserted its Potential Reach was approximately 4 times (400%) higher than the  
4 number of real 18-34 year-olds with Facebook accounts in Chicago. Based on a combination of  
5 publicly available research and Plaintiffs' own analysis, Facebook's asserted Potential Reach in Kansas  
6 City was approximately 200% higher than the number of actual 18-54 year-olds with Facebook  
7 accounts in Kansas City. This inflation is apparent in other age categories as well.

8  
9 5. Facebook's own former employees have confirmed the problem. For example, a former  
10 Facebook employee who worked in the infrastructure/mapping team, (Confidential Witness 1), stated  
11 that those who were responsible for ensuring the accuracy of the Potential Reach at Facebook were  
12 indifferent to the actual numbers and in fact "did not give a sh--." This former employee further stated  
13 that the "Potential Reach" statistic is "like a made-up PR number." Another former Facebook employee  
14 (Confidential Witness 2), stated that Facebook does not care about the accuracy of information related  
15 to the number of users so long as advertising revenue is not negatively affected. And a third former  
16 Facebook employee (Confidential Witness 3), stated that Facebook was not concerned with stopping  
17 duplicate or fake accounts in calculating Potential Reach.

18 6. Because Facebook has inflated its Potential Reach, Plaintiffs and putative class  
19 members purchased more advertisements from Facebook and paid a higher price for advertisements  
20 than they otherwise would have. Plaintiffs and putative class members accordingly seek compensation  
21 and injunctive relief for violations of California's Unfair Competition Law, breach of contract, and for  
22 restitution.

### **JURISDICTION**

23 7. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2)  
24 because this is a class action wherein the amount in controversy exceeds the sum or value of  
25 \$5,000,000, exclusive of interest and costs, there are more than 100 members in the proposed class,  
26 and at least one member of the class of Plaintiffs is a citizen of a state different from a Defendant.

27 8. This Court has personal jurisdiction over Defendant Facebook, Inc., because Facebook,  
28

1 Inc., is headquartered in California, and conducts business in the state of California.

2 9. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because a substantial part  
3 of the events or omissions giving rise to the claims occurred in, were directed to, and/or emanated from  
4 this District. Venue is also proper because Facebook's terms of service require that claims be resolved  
5 "exclusively in the U.S. District Court for the Northern District of California or a state court located in  
6 San Mateo County...."<sup>6</sup>

### 7 **PARTIES**

8 10. Plaintiff Danielle Singer is a citizen and resident of the state of Kansas. Plaintiff owns  
9 and operates a business, Project Therapy, LLC, under the trade name Therapy Threads in the state of  
10 Kansas. The primary business activity of Therapy Threads is the selling of aromatherapy fashionwear,  
11 sold online through the United States.

12 11. Plaintiff Project Therapy, LLC is a limited liability company registered to do business  
13 in the state of Kansas.

14 12. Plaintiff Holly Dean is a citizen and resident of the state of Florida.

15 13. Plaintiff DZ Reserve is a company incorporated and headquartered in the state of  
16 Colorado.

17 14. Plaintiff Cain Maxwell is a citizen and resident of the state of Ohio.

18 15. Defendant Facebook, Inc., is incorporated in Delaware, and its principal place of  
19 business is 1 Hacker Way, Menlo Park, CA 94025.

### 20 **FACTUAL ALLEGATIONS**

21 16. Facebook is one of the largest social media companies in the world. It owns and operates  
22 Facebook.com, as well as Instagram and the WhatsApp Messenger service.

23 17. In 2017, Facebook saw its revenues from online advertisements reach approximately  
24 \$40 billion.<sup>7</sup>

25  
26  
27 <sup>6</sup> Facebook, *Statement of Rights and Responsibilities*, <https://www.facebook.com/terms> (last  
accessed: June 17, 2019).

28 <sup>7</sup> Facebook, Inc., Annual Report (Form 10-K) for 2017 Fiscal Year, at 41 (Feb. 1, 2018), at 43.

1           18. In marketing its online advertisement services, Facebook claims that more than 2 billion  
2 people use Facebook every month.<sup>8</sup> Additionally, in its Ads Manager, Facebook has claimed that 240  
3 million of those active users are located in the United States.<sup>9</sup>

4           19. Until approximately March 12, 2019, Facebook's Potential Reach was based, at least in  
5 part, on estimates of the number of people who were active users in the past month.<sup>10</sup> After March 12,  
6 2019, Potential Reach is based, at least in part, on how many people have been shown an ad on a  
7 Facebook Product in the past 30 days who match the respective advertiser's desired audience and  
8 placement criteria.<sup>11</sup>

9           20. Facebook defines a Monthly Active User (MAU) as a "registered Facebook user who  
10 logged in and visited Facebook through [Facebook's] website or a mobile device, or used [Facebook's]  
11 Messenger application (and is also a registered Facebook user), in the last 30 days as of the date of  
12 measurement. MAUs are a measure of the size of our global active user community."<sup>12</sup>

13           21. Audience size is an important factor when advertisers determine where to spend  
14 marketing dollars. Indeed, Potential Reach and Estimated Daily Reach are the only information  
15 Facebook provides to advertisers regarding the anticipated performance of the ad campaign prior  
16 purchasing an advertisement. Moreover, user inflation can skew an advertiser's decision making,  
17 which is frequently based on the anticipated reach of the advertising campaign, or "Potential Reach."<sup>13</sup>

18           22. Reach inflation can have "real consequences for an advertiser's overall communications  
19 plain."<sup>14</sup> For advertisers, "Facebook Ads Manager functions as a tool for an advertiser to plan, budget,  
20

21           <sup>8</sup> Facebook, Inc., Annual Report (Form 10-K) for 2017 Fiscal Year, at 41 (Feb. 1, 2018), at 34.

22           <sup>9</sup> See *Facebook's Ads Manager*, available at <https://www.facebook.com/adsmanager/creation>  
(last accessed August 1, 2018).

23           <sup>10</sup> See *Updates to Potential Reach*, available at  
24 [https://www.facebook.com/business/help/567031670465069?helpref=faq\\_content](https://www.facebook.com/business/help/567031670465069?helpref=faq_content) (last accessed June  
14, 2019)

25           <sup>11</sup> *Id.*

26           <sup>12</sup> Facebook, Inc., Annual Report (Form 10-K) for 2017 Fiscal Year, at 41 (Feb. 1, 2018), at 36

27           <sup>13</sup> "Facebook Audience Inflation a Global Issue-Ad News Study", AdNews (September 8, 2017)  
available at [http://www.adnews.com.au/news/facebook-audience-inflation-a-global-issue-adnews-](http://www.adnews.com.au/news/facebook-audience-inflation-a-global-issue-adnews-study)  
study (visited July 16, 2018).

28           <sup>14</sup> Video Advertising Bureau, "Facebook's Reach (on Reach), Miscalculations in the Age of

1 buy and optimize their own campaigns across Facebook platforms.”<sup>15</sup>

2 23. Facebook’s large purported potential reach is widely acknowledged as one of the main  
3 reasons that advertisers choose to purchase advertisements from Facebook.

4 24. For example, an online advertising commentator recently noted that the large number of  
5 people that can potentially be reached on Facebook is one of the four “reasons why you can’t ignore  
6 Facebook advertising.”<sup>16</sup>

7 25. Similarly, Aleksandar Radonjic, the Founder and Chief Growth Strategist at Evolving  
8 Digital (a digital marketing agency) explained in his blog post, “Why Facebook Has To Be Included in  
9 Your Marketing Plan” that “big brands understand the value of Facebook and are actively engaged with  
10 their customers. Small and medium-sized organizations have to do the same, even if you are a small  
11 local business *because the potential reach is unmatched by any other social media platform.*” (emphasis  
12 added).<sup>17</sup>

13 26. Moreover, Facebook itself encourages advertisers to refer to the Potential Reach after  
14 they have started an advertising campaign to determine the percentage of their target audience that they  
15 have reached.<sup>18</sup>

# 16 I. Facebook’s Representations to Advertisers

17 27. In describing the advantages of advertising on its website, Facebook tells advertisers  
18 that “[t]wo billion people use Facebook every month.”<sup>19</sup>

19 28. Facebook touts the reach of its platform, telling advertisers “Show your ads to more  
20

21  
22 Precision”, p. 19, September 2017, available at <https://www.thevab.com/wp-content/uploads/2017/09/Facebooks-Reach.pdf> (accessed August 6, 2018).

23 <sup>15</sup> *Id.*

24 <sup>16</sup> “4 Reasons Why You Can’t Ignore Facebook Advertising,” InstaPage (September 10, 2018)  
25 <https://instapage.com/blog/4-reasons-facebook-advertising-cant-be-ignored> (last accessed December 19, 2018).

26 <sup>17</sup> “Why Facebook Has to Be Included in Your Marketing Plan,” Aleksandar Radonjic,  
27 <http://www.evolving-digital.com/resources/Facebook-Marketing> (last accessed December 19, 2018).

28 <sup>18</sup> <https://www.facebook.com/business/help/1639908612985580> (last accessed December 19, 2018).

<sup>19</sup> Quoted from <https://www.facebook.com/business/products/ads> (accessed August 13, 2018).

1 people in more places. Improve your reach by running your ads across Facebook, Instagram, and  
2 Audience Network.”<sup>20</sup>

3 29. Facebook makes these representations when advertisers purchase advertisements from  
4 Facebook, which they do through Facebook’s “Ads Manager.”

5 30. The terms on the “Ads Manager” are part of Facebook’s contract with advertisers.

6 31. The “Ads Manager” provides only two data points related to audience size, “Potential  
7 Reach” and “Estimated Daily Results Reach.” The Estimated Daily Results Reach is derived in part  
8 from the Potential Reach audience size. Facebook’s Estimated Daily Reach “gives you an idea of how  
9 many of the people in your target audience [or Potential Reach] you may be able to reach on a given  
10 day.”<sup>21</sup>

11 32. The Potential Reach and the Estimated Daily Results Reach are provided to every  
12 advertiser who purchases advertisements through Ads Manager, and are part of Facebook’s contract  
13 with advertisers.

14 33. On the “Ads Manager,” advertisers can target their advertisement to users of different  
15 demographics. *See* Figure 1. Using the demographic criteria on “Ads Manager,” advertisers can target  
16 people in various locations, age ranges, or genders.

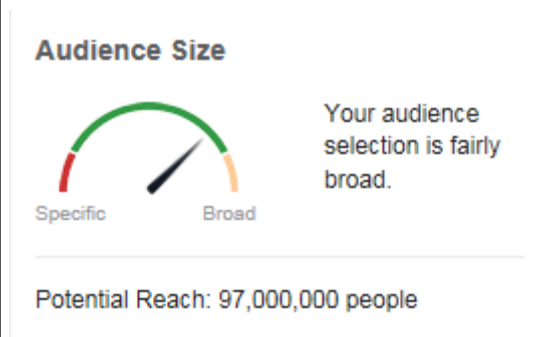
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27 <sup>20</sup> *Id.*

28 <sup>21</sup> *See What are “Potential Reach” and “Estimated Daily Reach?”*, available at  
<https://www.facebook.com/business/help/717368264947302/?ref=u2u> (last accessed August 1, 2018)

**Figure 1**

34. Regardless of the demographic criteria used to target the advertisements, the “Ads Manager” shows a graphic with the audience size based on the criteria that advertisers selected. See Figure 2.

**Figure 2**

35. Below the audience size graphic, the “Ads Manager” states “Potential Reach: \_\_\_\_\_ people.” See Figure 2. The “Ads Manager” displays the “Potential Reach” statistic before the advertiser purchasers the advertisement.

36. Facebook consistently represents that the Potential Reach is a measurement of actual



people, not just accounts.

37. The Ads Manager graphic displaying the Potential Reach and Estimated Daily Results Reach is shown on multiple consecutive pages on Ads Manager where advertisers input information before purchasing an advertisement. *See* Exhibit 1, Facebook's Ads Manager.<sup>22</sup> The Potential Reach and Estimated Daily Results are included on the same page where advertisers set the budget and schedule for their advertisements:

on

Search

Exclude Content and Publishers  
Available for Audience Network, Instant Articles and In-Stream Videos.

Apply Block Lists ⓘ

Exclude Categories ⓘ

**Budget & Schedule**  
Define how much you'd like to spend, and when you'd like your ads to appear.

Budget ⓘ  \$5.00  
\$5.00 USD

Actual amount spent daily may vary ⓘ

Schedule ⓘ ☒ Run my ad set continuously starting today  
☐ Set a start and end date

You'll spend no more than \$35.00 per week.

Optimization for Ad Delivery ⓘ    
To help us improve delivery optimization, we may survey a small section of your audience.

Frequency Cap ⓘ  impression every  days

Bid Strategy ⓘ ☒ Lowest cost - Get the most impressions for your budget ⓘ  
☐ Set a bid cap

When You Get Charged ⓘ ☒ Impression

Ad Scheduling ⓘ ☒ Run ads all the time  
☐ Run ads on a schedule

Delivery Type ⓘ ☒ Standard - Get results throughout your selected schedule  
More Options

Hide Advanced Options \*

Back Continue

**Audience Size**

Your audience selection is broad. This requires a large budget.

Potential Reach: 240,000,000 people ⓘ

**Estimated Daily Results**

Reach ⓘ  
3.0K - 19K

The accuracy of estimates is based on factors like past campaign data, the budget you entered and market data. Numbers are provided to give you an idea of performance for your budget, but are only estimates and don't guarantee results.

Were these estimates helpful?

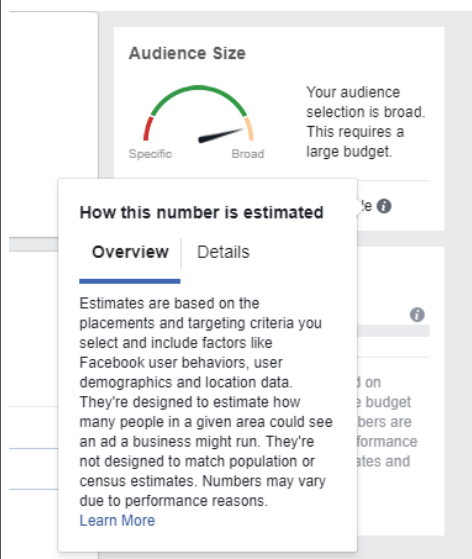
38. When an advertiser clicks on the “i” icon next to the Potential Reach, Facebook’s

<sup>22</sup> Exhibit 1 to Plaintiffs’ Second Amended Consolidated Class Action Complaint is identical to ECF No. 66-3 (Exhibit C to Facebook’s Motion to Dismiss Consolidated Class Action Complaint).

1 website states, “Estimates are based on the placements and targeting criteria you select and include  
 2 factors like Facebook user behaviors, user demographics and location data. They’re designed to  
 3 estimate how many *people* in a given area could see an ad a business might run. They’re not designed  
 4 to match population or census estimates. Numbers may vary due to performance reasons.” (emphasis  
 5 added) See Figure 3.

6 39. Yet, Facebook fails to disclose to advertisers that its Potential Reach statistic is inflated.

7  
 8 **Figure 3**



19 40. When an advertiser clicks on “Learn More” for potential reach, Facebook’s website  
 20 states, “Potential reach is an estimation of how many *people* are in an ad set’s target audience.... It  
 21 updates in real time as you create or edit your ad set to help you understand how your targeting and  
 22 placement choices affect the number of *people* you could reach.” (emphasis added) See Figure 4.

**Figure 4****About potential reach**

Potential reach is an estimation of how many people are in an ad set's target audience. This estimation is a unique calculation by Facebook (more on our methodology below) and isn't intended to align with third party calculations or population census data. It updates in real time as you create or edit your ad set to help you understand how your targeting and placement choices affect the number of people you could reach.

The number of people you actually end up reaching depends on your budget and performance. For that estimation, check your estimated daily results (and keep in mind those results apply to each day, not the total results for your ad set).

41. Facebook's Advertiser Help Center states that the "Potential Reach is an estimation of the potential number of people your ads could reach."<sup>23</sup>

**II. Facebook's Potential Reach is Inflated**

42. According to Census data, the U.S. population numbered over 320 million individuals in 2017, with just over 250 million adults over 18 years old.<sup>24</sup>

43. Facebook represents to advertisers a Potential Reach of 230 million monthly active users over the age of 18 in the U.S.<sup>25</sup>

44. According to a 2018 survey from the Pew Research Center, 68% of U.S. adults, aged 18 and over, use Facebook.<sup>26</sup> Based on this 68% figure, only 170 million U.S. adults have a Facebook account. Thus, Facebook represents to advertisers that it has approximately 35% more users in the United States than it actually does.

45. Using the usage rate estimate provided by Pew Research Center, Facebook's Potential Reach is inflated with respect to the 18 years and over demographic in the four largest states, as set

<sup>23</sup> Quoted from <https://www.facebook.com/business/help> (accessed August 13, 2018).

<sup>24</sup> See United States Census Bureau's "American Fact Finder" available at [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP\\_2017\\_PEPA\\_GESEX&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPA_GESEX&prodType=table) (last accessed August 1, 2018).

<sup>25</sup> See Facebook's *Ads Manager*, available at <https://www.facebook.com/adsmanager/creation> (last accessed August 1, 2018).

<sup>26</sup> Pew Research Center, March 2018, "Social Media Use in 2018".

forth below:

<u>State</u>	<u>Estimated Actual Facebook Users<sup>27</sup></u>	<u>Facebook's Claimed Reached<sup>28</sup></u>	<u>Inflation Rate</u>
California	20.7 million	30 million	45%
Texas	14.2 million	21 million	48%
Florida	11.4 million	16 million	40%
New York	10.6 million	16 million	50%

46. Among the most important – if not the most important – demographic for advertisers is the 18-34 year-old audience. This is because younger audiences are generally believed to have less brand loyalty and more disposable income.<sup>29</sup>

47. Even more inflated is the key marketing demographic of young adults aged 18-34, where the U.S. population in 2017 numbered just under 76 million.<sup>30</sup> Facebook represents to advertisers that it can reach 100 million people in this age category.<sup>31</sup> Accordingly, Facebook claims that it can reach 24 million more people in this demographic than actually exist. Additionally, according to Pew Research only 80% of this demographic actually use Facebook.<sup>32</sup> Thus, only 61 million 18-34 year-olds are actually using Facebook, resulting in a nationwide inflation rate of 64%.

48. Nor can this discrepancy be explained by non-resident travelers. Facebook indicates that its Potential Reach among 18-34 year olds in the United States includes less than 2 million non-resident travelers. *See* Figure 5.

<sup>27</sup> These figures are based on the U.S. Census Bureau's estimated demographic size and accounting for the national average of Facebook participation as determined by Pew Research's polling data of 68%.

<sup>28</sup> *See Facebook's Ads Manager*, available at <https://www.facebook.com/adsmanager/creation> (last accessed August 1, 2018).

<sup>29</sup> *See e.g., Weinman, Jaime J. (2012). "Television's mid-life crisis." Maclean's. 125 (27): 72*

<sup>30</sup> *See United States Census Bureau's "American Fact Finder", available at [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP\\_2017\\_PEPSY\\_ASEXN&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPSY_ASEXN&prodType=table) (last accessed August 1, 2018).*

<sup>31</sup> *See Facebook's Ads Manager*, available at <https://www.facebook.com/adsmanager/creation> (last accessed August 1, 2018).

<sup>32</sup> Pew Research Center, March 2018, "Social Media Use in 2018".

**Figure 5**

## Interestingly, There's No Difference In The Potential Reach Between "Everyone" In The U.S. & Those That "Live" Here

Although it'd be expected that "everyone in this location" would include non-resident travelers, this universe within Facebook Ads Manager reflects the same size as "people who live in this location"



### Facebook Platforms - Potential Reach

(FB + Instagram + Audience Network + Messenger)

#### Demo

P18-24

P25-34

#### "Everyone In This Location"

39,000,000

58,000,000

In theory, "everyone" should include travelers as well even though the country-wide numbers are the same as the resident totals (i.e., "people who live in this location")

#### "People Who Live In This Location"

39,000,000

58,000,000

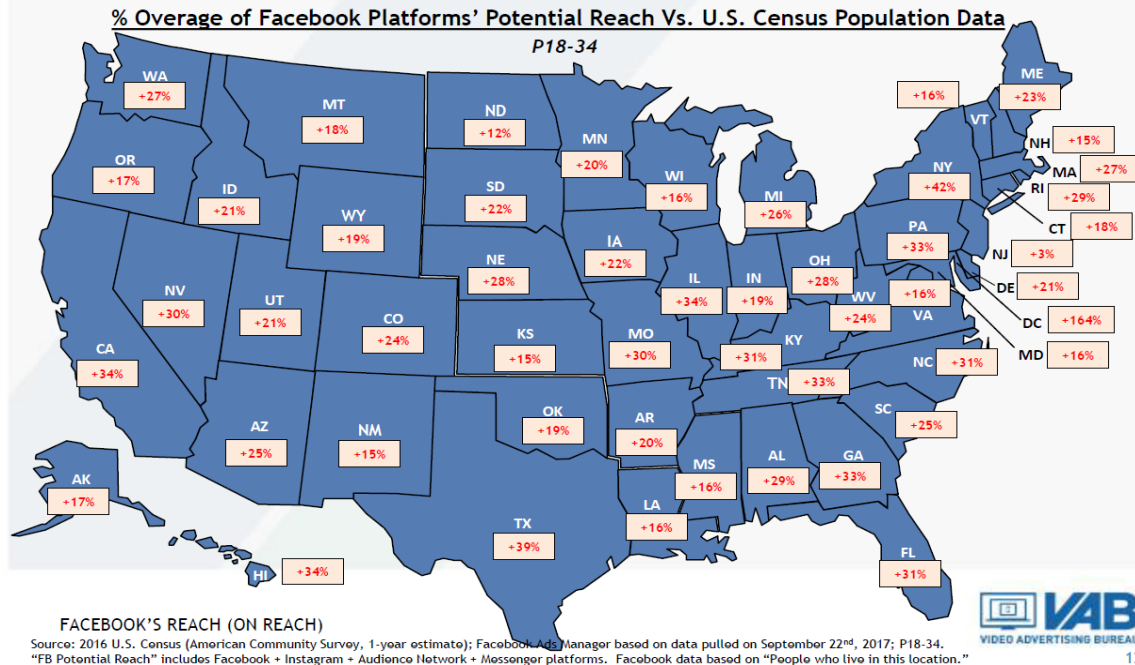
Note: there are only 670K and 940K identified within the potential reach as those who are "traveling in this location" among P18-24 & P25-34, respectively

49. Publicly available research has shown that the Potential Reach for 18-34 year-olds is not only overstated at a national level but exceeds the U.S. Census Population Data in every state. See Figure 6.<sup>33</sup>

<sup>33</sup> Video Advertising Bureau Report, at 13.

**Figure 6**

## In **Every** State, Facebook Claims They Can Reach More P18-34 Residents Than What Is Reported By The U.S. Census Bureau



50. The difference between Facebook's Potential Reach and U.S. Census Bureau statistics can be illustrated at the metropolitan level as well. For example, the following chart provides examples of the massive inflation of Facebook's claimed Potential Reach in selected cities:

51. Other examples<sup>34</sup> from September 2017 for the 18-34 year-old demographic include:

<u>City</u>	<u>18-34 year-old Census Pop.</u>	<u>Facebook's Claimed Reach</u>	<u>Inflation Rate</u>
Dallas	379,567	1,200,000	216%
Houston	645,229	1,800,000	179%
Los Angeles	1,125,300	2,700,000	140%
New York	2,305,171	4,100,000	78%
Philadelphia	459,386	1,100,000	139%
Phoenix	410,220	720,000	76%
San Antonio	401,801	690,000	72%
San Diego	434,646	760,000	75%
San Jose	256,343	490,000	91%

52. Because not every 18-34 year-old has a Facebook Account, the discrepancy between

<sup>34</sup> See Video Advertising Bureau Report, at 14.

Facebook's Potential Reach for the 18-34 year-old demographic and the Census Population does not capture the full extent to which Facebook's Potential Reach is overstated.

53. For example, Plaintiffs commissioned their own survey to determine the percentage of 18-34 years old in Chicago who have a Facebook account. The survey found that 59% of 18-34 year-olds in Chicago have Facebook accounts. In September 2017 in Chicago, Facebook's Potential Reach was 1,900,000. However, the Census Population for 18-34 year-olds in Chicago was only 808,785.<sup>35</sup> Thus, based on this comparison alone, Facebook's Potential Reach for 18-34 years old in September 2017 was 2.35 times the Census Population.

54. The inflation of Facebook's Potential Reach is even more dramatic when compared to the survey. In 2017, based on the survey described above, approximately 485,000 actual Chicago residents between 18-34 had Facebook accounts. Therefore, when Facebook represented that the "Potential Reach" for this demographic was 1,900,000, it was almost 4 times that true number of people potentially reached.

55. A similar analysis reveals dramatic inflation of the Potential Reach number in Kansas City. Among the 18-54-year-olds demographic in the Kansas City metropolitan area, Facebook claims advertisements placed on its marketplace have the potential to reach 1.4 million people.<sup>36</sup>

56. But the 18-54 demographic in the Kansas City metropolitan area only consists of approximately 1 million people.<sup>37</sup> And even then, based on survey data commissioned by the Plaintiff only 70% of that demographic has Facebook accounts. This puts the inflation rate in Kansas City at 100%.

### III. Former Facebook Employees Confirm the Problem

57. Former Facebook employees have acknowledged that Facebook did not care about the accuracy of its "Potential Reach" statistic.

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<sup>35</sup> *Id.*

<sup>36</sup> See Facebook's Ads Manager, available at <https://www.facebook.com/adsmanager/creation> (last accessed August 1, 2018).

<sup>37</sup> See United States Census Bureau's "American Fact Finder", available at [https://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=DEC\\_10\\_SF1\\_QT P2&prodType=table](https://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=DEC_10_SF1_QT P2&prodType=table) (last accessed August 1, 2018).



1           58. When asked about Facebook’s reach numbers, Confidential Witness 1, a data rating and  
2 labeling specialist formerly employed at Facebook, stated that the Potential Reach statistic sounds “like  
3 a made-up PR number” and that it was “fluff”. When asked if Facebook cared about getting these  
4 numbers right, Confidential Witness 1 stated that those who were responsible for ensuring the accuracy  
5 “did not give a sh--.”

6           59. When directly asked about potential inflation of Facebook’s user base, Confidential  
7 Witness 2, a former Engineering Lead with Facebook, stated that Facebook does not care about the  
8 accuracy of information related to number of users so long as advertising revenue is not negatively  
9 affected. Confidential Witness 2 believed that number of Facebook purported users – and therefore the  
10 Potential Reach – is inflated.

11           60. Confidential Witness 3, a former Operations Contractor with Facebook, stated that  
12 Facebook was not concerned with stopping duplicate or fake accounts. Confidential Witness 3  
13 explained that Facebook primarily relied on ad hoc written complaints from Facebook users and  
14 ineffective algorithms to assure accuracy. Generally, Confidential Witness 3 claimed Facebook was  
15 only concerned with accounts created for nefarious purposes and Facebook turned a blind eye to other  
16 non-unique individual accounts.

17 **IV. Facebook’s User Base Inflation Is Material**

18           61. Advertising purchasers, including Plaintiffs Danielle A. Singer, Project Therapy, LLC  
19 (d/b/a Therapy Threads), Holly Dean, DZ Reserve, and Cain Maxwell viewed the “Potential Reach” as  
20 an important statistic because it means that more individuals could potentially view their advertisement.

21           62. Facebook fails to disclose to advertisers that its Potential Reach statistic is inflated.

22           63. Plaintiffs Danielle A. Singer, Project Therapy, LLC (d/b/a Therapy Threads), Holly  
23 Dean, DZ Reserve, and Cain Maxwell read Facebook’s “Potential Reach” prior to purchasing  
24 advertisements from Facebook, and they relied on Facebook’s “Potential Reach” in making their  
25 decisions to purchase advertisements from Facebook.

26           64. Facebook’s misrepresentation of the Potential Reach of its advertisements induced  
27 advertising purchasers (including Plaintiffs Danielle A. Singer, Project Therapy, LLC (d/b/a Therapy  
28



1 Threads), Holly Dean, DZ Reserve, and Cain Maxwell) to purchase advertisements, which they  
2 otherwise would not have purchased, because purchasers (including Plaintiffs Danielle A. Singer,  
3 Project Therapy, LLC (d/b/a Therapy Threads), Holly Dean, DZ Reserve, and Cain Maxwell) believed  
4 that more people could potentially be reached by their advertisements than possibly could have been.

5 65. Facebook's misrepresentation of the Potential Reach of its advertisements induced  
6 advertising purchasers (including Plaintiffs Danielle A. Singer, Project Therapy, LLC (d/b/a Therapy  
7 Threads), Holly Dean, DZ Reserve, and Cain Maxwell) to pay more for Facebook advertising than they  
8 otherwise would have been willing to pay.

9 66. Facebook's misrepresentation of the Potential Reach of its advertisements thereby  
10 distorted the market price for its advertising by artificially increasing the price of Facebook advertising,  
11 causing advertising purchasers (including Plaintiffs Danielle A. Singer, Project Therapy, LLC (d/b/a  
12 Therapy Threads), Holly Dean, DZ Reserve, and Cain Maxwell) to pay more than they otherwise would  
13 have paid.

14 67. Facebook's misrepresentation of the Potential Reach of its advertisements provided  
15 Facebook with an unfair competitive advantage over other advertising platforms including other online  
16 advertising platforms, such as YouTube, LinkedIn, and Twitter.

### 17 **PLAINTIFFS' EXPERIENCES**

18 68. As noted above, Facebook's Potential Reach is vastly inflated at the national, state,  
19 and local levels. Thus, the inflation impacted the Potential Reach and Estimated Reach of Plaintiffs'  
20 advertising campaigns on Facebook.

#### 21 ***Danielle Singer and Therapy Threads***

22 69. Plaintiff Danielle Singer ("Singer") owns and operates Plaintiff Project Therapy, LLC  
23 d/b/a Therapy Threads ("Therapy Threads").

24 70. Therapy Threads is an online business that sells aromatherapy fashionwear and  
25 accessories, including scarfs, jewelry, and essential oils.

26 71. During the period starting in October 2013 and ending in April 2018, Plaintiff Singer  
27 ran advertising campaigns on Facebook platforms (including the Facebook and Instagram platforms)  
28

1 for Therapy Threads.

2 72. Over this time period, Plaintiffs Singer and Therapy Threads paid Facebook over  
3 \$14,000 for Facebook advertisements.

4 73. Plaintiffs Singer and Therapy Threads read Facebook's "Potential Reach" prior to  
5 purchasing advertisements from Facebook, and they relied on Facebook's "Potential Reach" in making  
6 their decisions to purchase advertisements from Facebook.

7 74. Plaintiffs Singer and Therapy Threads read Facebook's "Estimated Daily Results  
8 Reach" prior to purchasing advertisements from Facebook, and they relied on Facebook's "Estimated  
9 Daily Results Reach" in making their decisions to purchase advertisements from Facebook.

10 75. Plaintiffs Singer and Therapy Threads ran nationwide campaigns for various age  
11 demographics, as well as campaigns targeted at specific large metropolitan areas, including, but not  
12 limited to, Austin, Chicago, Dallas, Denver, Kansas City, Las Vegas, Los Angeles, New York, San  
13 Diego, San Francisco, and Phoenix. For example, in October 2017, Plaintiffs Singer and Therapy  
14 Threads purchased advertising campaigns on Facebook targeting 18-35 year-olds in the Chicago  
15 metropolitan area. Plaintiffs Singer and Therapy Threads also purchased multiple advertising  
16 campaigns in the Kansas City metropolitan area, the metropolitan area where Plaintiff Singer resides.

17 76. Plaintiffs Singer and Therapy Threads wish and intend to purchase additional  
18 advertisements from Facebook in the future. However, if Facebook continues to inflate its Potential  
19 Reach and Estimated Daily Results Reach, it will be difficult for Plaintiffs Singer and Therapy Threads  
20 to trust Facebook's representations about the Potential Reach and Estimated Daily Results Reach of  
21 Plaintiffs' Facebook advertisements or other statistics provided by Facebook about Facebook  
22 advertisements.

23 ***Holly Dean***

24 77. Plaintiff Holly Dean ("Dean") is a citizen and resident of the state of Florida.

25 78. In January 2016, Plaintiff Dean ran advertising campaigns on Facebook platforms  
26 (including the Facebook platform).

27 79. Plaintiff Dean paid Facebook approximately \$ 40 for Facebook advertisements.  
28

1           80. Plaintiff Dean read Facebook's "Potential Reach" prior to purchasing advertisements  
2 from Facebook, and Plaintiff Dean relied on Facebook's "Potential Reach" in making her decision to  
3 purchase advertisements from Facebook.

4           81. Plaintiff Dean read Facebook's "Estimated Daily Results Reach" prior to purchasing  
5 advertisements from Facebook, and Plaintiff Dean relied on Facebook's "Estimated Daily Results  
6 Reach" in making her decision to purchase advertisements from Facebook.

7           ***DZ Reserve***

8           82. Plaintiff DZ Reserve is a company incorporated and headquartered in Colorado.

9           83. Plaintiff DZ Reserve operates several e-commerce stores.

10          84. Between December 2017 and December 2018, Plaintiff DZ Reserve ran advertising  
11 campaigns on Facebook platforms (including Facebook and Instagram platforms).

12          85. Over this time period, Plaintiff DZ Reserve paid Facebook approximately \$ 1 million  
13 dollars for Facebook advertisements.

14          86. Plaintiff DZ Reserve read Facebook's "Potential Reach" prior to purchasing  
15 advertisements from Facebook, and Plaintiff DZ Reserve relied on Facebook's "Potential Reach" in  
16 making Plaintiff's decision to purchase advertisements from Facebook.

17          87. Plaintiff DZ Reserve read Facebook's "Estimated Daily Results Reach" prior to  
18 purchasing advertisements from Facebook, and Plaintiff DZ Reserve relied on Facebook's "Estimated  
19 Daily Results Reach" and in making Plaintiff's decision to purchase advertisements from Facebook.

20          88. Plaintiff DZ Reserve ran nationwide campaigns, as well as campaigns targeted at  
21 specific cities, including, but not limited to, Los Angeles and New York City.

22          89. Plaintiff DZ Reserve wishes and intends to purchase additional advertisements from  
23 Facebook in the future. However, if Facebook continues to inflate its Potential Reach and Estimated  
24 Daily Results Reach, it will be difficult for Plaintiff DZ Reserve to trust Facebook's representations  
25 about the Potential Reach and Estimated Daily Results Reach of Plaintiff's Facebook advertisements  
26 or other statistics provided by Facebook about Facebook advertisements.  
27  
28

***Cain Maxwell***

90. Plaintiff Cain Maxwell (“Maxwell”), d/b/a Max Martialis, is a citizen and resident of the state of Ohio.

91. From approximately September 2018 to May 2019, Maxwell ran advertising campaigns on Facebook platforms (including the Facebook platform).

92. Over this time period, Maxwell paid Facebook approximately \$ 400 for Facebook advertisements.

93. Plaintiff Maxwell read Facebook’s “Potential Reach” prior to purchasing advertisements from Facebook, and Plaintiff Maxwell relied on Facebook’s “Potential Reach” in making his decision to purchase advertisements from Facebook.

94. Plaintiff Maxwell read Facebook’s “Estimated Daily Results Reach” prior to purchasing advertisements from Facebook, and Plaintiff Maxwell relied on Facebook’s “Estimated Daily Results Reach” in making his decision to purchase advertisements from Facebook.

95. Plaintiff Maxwell ran nationwide campaigns.

96. Plaintiff Maxwell wishes and intends to purchase additional advertisements from Facebook in the future. However, if Facebook continues to inflate its Potential Reach and Estimated Daily Results Reach, it will be difficult for Plaintiff Maxwell to trust Facebook’s representations about the Potential Reach and Estimated Daily Results Reach of Plaintiff’s Facebook advertisements or other statistics provided by Facebook about Facebook advertisements.

**CLASS ALLEGATIONS**

97. Plaintiffs re-alleges and incorporates by reference herein all of the allegations contained above.

98. Pursuant to the Federal Rule of Civil Procedure 23(b)(3), Plaintiff asserts claims on behalf of the following “Class”: All persons or entities who, from January 1, 2013, to the present (“Class Period”), had an account with Facebook, Inc., and who paid for placement of advertisements on Facebook’s platforms, including the Facebook and Instagram platforms. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest, and Defendant’s officers,

1 directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class is  
2 any judge, justice, or judicial officer presiding over this matter and the members of their immediate  
3 families and judicial staff.

4 99. This action has been brought and may properly be maintained as a class action as it  
5 satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements of Rule  
6 23(b)(3). Plaintiffs seek to represent an ascertainable Class, as determining inclusion in the class can  
7 be done through Facebook's own records.

8 100. Plaintiffs reserve the right to amend the Class definition if discovery and further  
9 investigation reveal that the Class should be expanded, divided into subclasses, or modified in any  
10 other way.

11 101. Although the precise number of Class members is unknown and can only be  
12 determined through appropriate discovery, Plaintiffs believe, and on that basis alleges, that the  
13 proposed Class is so numerous that joinder of all members would be impracticable as Facebook sells  
14 millions of advertisements annually to hundreds of thousands or even millions of advertisers.

15 102. Questions of law and fact common to the putative Class predominate over questions  
16 affecting only individual members, including inter alia:

17 a. Whether Facebook made material misrepresentations about its advertising services,  
18 including misrepresenting its Potential Reach; and

19 b. Whether Facebook breached its contractual duty to perform competently and with  
20 reasonable care by providing its inflated Potential Reach.

21 103. Plaintiffs are members of the putative Class. The claims asserted by Plaintiffs in this  
22 action are typical of the claims of the members of the putative Class, as the claims arise from the  
23 same course of conduct by the Defendant and the relief sought is common.

24 104. Plaintiffs will fairly and adequately represent and protect the interests of the members  
25 of the putative Class, as their interests are coincident with, and not antagonistic to, the other members  
26 of the putative Class.

27 105. Plaintiffs have retained counsel competent and experienced in both consumer  
28

1 protection and class action litigation. Plaintiffs' counsel has experience litigating some of the largest  
2 and most complex consumer class actions, including numerous consumer class actions in the  
3 Northern District of California.

4 106. Certification of the Class is appropriate pursuant to Fed. Rule of Civil Procedure  
5 23(b)(3) because questions of law or fact common to the respective members of the Class  
6 predominate over questions of law or fact affecting only individual members. This predominance  
7 makes class litigation superior to any other method available for the fair and efficient adjudication of  
8 these claims including consistency of adjudications. Absent a class action it would be highly unlikely  
9 that the members of the Class would be able to protect their own interests because the cost of  
10 litigation through individual lawsuits might exceed the expected recovery.

11 107. A class action is a superior method for the adjudication of the controversy in that it  
12 will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and  
13 without the unnecessary hardship that would result from the prosecution of numerous individual  
14 actions and the duplication of discovery, effort, expense, and the burden of the courts that individual  
15 actions would create.

16 108. In the alternative, the Class should be certified pursuant to Federal Rule of Civil  
17 Procedure 23(b)(2) because:

- 18 a. The prosecution of separate actions by the individual members of the proposed class  
19 would create a risk of inconsistent adjudications, which could establish incompatible  
20 standards of conduct for Facebook;
- 21 b. The prosecution of individual actions could result in adjudications, which as a  
22 practical matter, would be dispositive of the interests of non-party class members or  
23 which would substantially impair their ability to protect their interests; and
- 24 c. Facebook has acted or refused to act on grounds generally applicable to the proposed  
25 Class, thereby making appropriate final and injunctive relief with respect to the  
26 members of the proposed Class as a whole.
- 27  
28

**FIRST CAUSE OF ACTION**  
**CALIFORNIA UNFAIR COMPETITION LAW,**  
**CAL. BUS. & PROF. CODE § 17200, *et seq.***<sup>38</sup>

109. Plaintiffs re-allege and incorporate by reference herein all of the allegations contained above.

110. Facebook violated California’s Unfair Competition Law (UCL), Cal. Bus. & Prof. Code §17200 et seq., by engaging in the fraudulent and unfair business acts and practices alleged previously, and as further specified below.

111. Facebook’s misrepresentation of the Potential Reach of advertisements constitutes a fraudulent practice under the UCL, as it deceived Class members into believing that their advertisements could potentially reach more people than their advertisement could actually reach.

112. Facebook fails to disclose to advertisers the extent to which the Potential Reach statistic is inflated. This omission constitutes a fraudulent practice under the UCL, as it deceived Class members into believing that their advertisements could potentially reach more people than their advertisement could actually reach.

113. Facebook’s failure properly to audit and verify the accuracy of its Potential Reach statistics before disseminating them to Class members is unethical, unscrupulous, and substantially injurious to advertising purchasers, and thus constitutes an unfair practice under the UCL. The harm these practices caused to Plaintiffs and the Class members outweigh their utility, if any.

114. Facebook should have known that its Potential Reach was inaccurate and inflated, and had Facebook properly audited and verified its Potential Reach, it would have known that the Potential Reach is inaccurate and inflated. The Potential Reach inflation would have been caught by a reasonable auditing and verification process.

115. Facebook’s failure to employ reasonable auditing and verification procedures gives it an unfair competitive advantage, as it allowed Facebook to provide advertising services at a lower

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<sup>38</sup> Pursuant to Facebook’s terms of service, the laws of the State of California govern “any claim” that arises between Facebook and its users, “without regard to conflict of law provisions.” Facebook, *Statement of Rights and Responsibilities*, <https://www.facebook.com/terms> (last accessed: June 17, 2019).

1 cost and made those advertising services appear to be more effective than they were.

2 116. Plaintiffs have standing to bring these claims under the UCL because they were  
3 injured and lost money or property, including but not limited to money paid for Facebook  
4 advertisements, as a result of Facebook's fraudulent and unfair business practices. Among other  
5 things, Plaintiffs would not have bought as much advertising services if Facebook had not  
6 disseminated an inflated Potential Reach statistic, and Plaintiffs would have paid a lower price for the  
7 advertising services they did purchase.

8 117. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs seek equitable relief to prevent  
9 the continued use of Facebook's unfair and fraudulent practices and to restore to the Class all money  
10 Facebook may have acquired by means of its fraudulent and unfair business practices.

11  
12 **SECOND CAUSE OF ACTION**  
**BREACH OF CONTRACT**

13 118. Plaintiffs re-allege and incorporate by reference herein all of the allegations contained  
14 above.

15 119. During the class period, Plaintiffs and Class members contracted with Facebook to  
16 provide them with advertising services, which included the provision of Potential Reach and  
17 Estimated Daily Results Reach.

18 120. The relevant terms of the contract include the Potential Reach and Estimated Daily  
19 Results Reach, which are set forth on consecutive Ads Manager pages where advertisers input  
20 information (including selecting a budget and schedule) at the point of purchase. *See* Exhibit 1  
21 (consecutive pages on Ads Manager that state the Potential Reach and Estimated Daily Results Reach  
22 metrics).

23 121. In addition, at all material times, the parties were acting pursuant to an established  
24 course of dealing, course of performance and usage of trade. Pursuant to the contract and the ongoing  
25 practice and normal course of dealing between the parties, Facebook provided Potential Reach and  
26 Estimated Daily Results Reach metrics to Plaintiffs at their point of purchase through the Ads  
27 Manager page.

28 122. Plaintiffs and Class members performed all or substantially all of their contractual



obligations, including submitting their advertising for Facebook's approval and paying for Facebook's advertising services.

123. Facebook breached the contract by providing inflated Potential Reach and Estimated Daily Results Reach metrics to Plaintiffs and Class members, thereby providing advertising services with less Potential Reach and Estimated Daily Reach than stated in the parties' contracts.

124. As a direct and proximate result of Facebook's inflated Potential Reach and Estimated Daily Reach Results, Plaintiffs and Class members did not receive the full benefit of their bargain, and instead received advertising services that were less valuable than what they paid for. Plaintiffs and Class members were damaged in an amount at least equal to this overpayment.

125. Accordingly, Plaintiffs and Class members have been injured as a result of Facebook's breach of contract and are entitled to damages and/or restitution in an amount to be proven at trial.

### **THIRD CAUSE OF ACTION** **QUASI-CONTRACT CLAIM FOR RESTITUTION**

126. Plaintiffs re-allege and incorporate by reference herein all of the allegations contained above.

127. Plaintiffs seek restitution in quasi contract, in the alternative, in the event that the trier of fact ultimately determines that a contract did not exist between Plaintiffs and Facebook.

128. Facebook's inflated Potential Reach made advertising on its platform appear more effective and valuable than it really was—leading Plaintiffs and the Class to pay more money to Facebook for advertising services than they otherwise would have paid.

129. Facebook knew about, accepted, and benefited from Plaintiffs' and Class members' purchase of these advertising services.

130. Under the circumstances, it would be inequitable for Facebook to benefit from its inaccurate and inflated Potential Reach calculation and its persistent failure to correct the error.

131. To avoid injustice, Plaintiffs and the Class accordingly seeks restitution and/or disgorgement of profits in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION**

**BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

132. Plaintiffs re-allege and incorporate by reference herein all of the allegations contained above.

133. Plaintiffs and Class members contracted with Facebook to provide them with advertising services.

134. These contracts were subject to implied covenants of good faith and fair dealing that all parties would act in good faith and with reasonable efforts to perform their contractual duties (both explicit and fairly implied) and not to impair the rights of other parties to receive the rights, benefits, and reasonable expectations under the contracts. These included the covenants that Facebook would act fairly and in good faith in carrying out its contractual obligations to provide Plaintiffs and Class members with accurate Potential Reach and Estimated Daily Reach of Plaintiffs and Class members' advertising.

135. Facebook did not act in good faith and fair dealing to provide Plaintiffs and Class members with accurate Potential Reach and Estimated Daily Reach of Plaintiffs and Class members' advertising. For example, instead of implementing a reasonable process to ensure the accuracy of its Potential Reach and Estimated Daily Reach, Confidential Witness 3 explained that Facebook primarily relied on ad hoc written complaints from Facebook users and ineffective algorithms to assure accuracy.

136. Plaintiffs and Class members met all or substantially all of their contractual obligations, including submitting their advertising for Facebook's approval and paying for Facebook's advertising services.

137. Facebook's failure to act in good faith in providing accurate Potential Reach and Estimated Daily Reach denied Plaintiffs and Class members the full benefit of their bargain. Plaintiffs and Class members received advertising services that were less valuable than what they paid for and less valuable than their reasonable expectations under the contracts. Plaintiffs and Class members were damaged by an amount at least equal to this overpayment.

138. Accordingly, Plaintiffs have been injured as a result of Facebook's breach of the

covenant of good faith and fair dealing and are entitled to damages and/or restitution in an amount to be proven at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Danielle A. Singer, Project Therapy, LLC (d/b/a Therapy Threads), Holly Dean, DZ Reserve, and Cain Maxwell, on behalf of themselves and the Class, seek the following relief:

A. An order certifying this action as a class action under Fed. R. Civ. P. 23, defining the Class as requested herein, appointing Geoffrey Graber of Cohen Milstein Sellers & Toll PLLC, as Class Counsel, and finding that Plaintiffs are proper representatives of the Class requested herein.

B. Plaintiffs request injunctive relief. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including: (i) an order prohibiting Facebook from engaging in the wrongful acts described herein; (ii) requiring Facebook to engage third-party auditors to conduct audits and evaluations of Facebook's purported user base and its Potential Reach, and ordering them to promptly correct any problems or issues detected by these auditors, and (iii) requiring Facebook to disclose any further inaccuracies with respect to its user base in a timely and accurate manner.

C. Plaintiffs also request damages, restitution, attorneys' fees, statutory costs, and such other and further relief as is just and proper. Plaintiffs seek attorneys' fees under California Code of Civil Procedure 1021.5.

### **JURY TRIAL DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand trial by jury in this action of all issues so triable.

DATED: June 17, 2019

Respectfully submitted,

By: /s/ Geoffrey Graber  
Geoffrey Graber

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